PUBLIC BUILDING COMMISSION OF CHICAGO

PROFESSIONAL CONSULTING SERVICES AGREEMENT
CONTRACT NUMBER PS 865

TO PROVIDE
CONSTRUCTION MANAGER SERVICES
FOR
120TH and PEORIA SALT DOME

Rodriguez & Associates, Inc.

Mayor Richard M. Daley
Chairman

Montel M. Gayles
Executive Director

Room 200
Richard J. Daley Center
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Revision date 7/18/05

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PROFESSIONAL SERVICES AGREEMENT
FOR CONSTRUCTION MANAGER

AGREEMENT NO. PS- 865

This agreement (the "Agreement"), dated as of the **14th** day of **June, 2005,** but actually executed on the date witnessed hereinbelow, by and between the **Public Building Commission of Chicago**, a municipal corporation of the State of Illinois, having its principal office at Room 200, Richard J. Daley Center, 50 West Washington Street, Chicago, Illinois 60602, (**"Commission"**), and **Rodriguez & Associates, Inc.,** an Illinois Corporation, with offices at **150 N. Michigan Ave., Suite 1120, Chicago, IL 60601, ("Construction Manager").**

W I T N E S S E T H:

WHEREAS, the Commission, on behalf of the **City of Chicago** (referred to in this Agreement as the **"User Agency"**), intends to undertake the construction and/or improvement of the following facility or facilities in Chicago, Illinois, described on Schedule A to this Agreement:

Project: New 120th and Peoria Salt Dome
120th and Peoria Streets
Chicago, IL

hereinafter called the "Project"; and

WHEREAS, the Commission requires certain professional services (the "Services"), described in Schedule A to this Agreement, in connection with the Project and desires to employ the Construction Manager, on the terms and conditions set forth in this Agreement, to perform such Services; and

WHEREAS, the Construction Manager desires so to be retained by the Commission and has represented to the Commission that the Construction Manager has the knowledge, skill, experience and other resources necessary to perform the Services in the manner herein provided; and

WHEREAS, the Construction Manager has consulted with the Commission, reviewed the Contract Documents (defined below) and taken such other actions as the Construction Manager has deemed necessary or advisable to familiarize itself with the scope of the Work and requirements of the Project and the Services;

WHEREAS the parties anticipate that the Construction Manager shall enter into one or more trade contracts or trade agreements with contractors or consultants in order to complete the development and construction of the Project;

NOW, THEREFORE, for valuable consideration, the Commission and the Construction Manager agree as follows:

1. **Incorporation of Recitals**. The matters recited above are hereby incorporated in and made a part of this Agreement.

2. **Definitions**.

   a. **Agreement** means this professional services Agreement, including all exhibits or documents attached hereto and/or incorporated by reference herein, and all amendments, modifications, or revisions made in accordance with the terms hereof.

   b. **Commission** as herein referred to shall include the Commission's Chairman, Secretary, Assistant Secretary, Executive Director, Chief of Staff, Director of Construction, Director of Procurement, Managing Architect, Project Manager, acting on behalf thereof, as designated by the Commission in writing, for the purpose of giving authorizations, instructions, and/or approval pursuant to this Agreement.

   c. **Construction Manager** means the company or other entity identified in this Agreement, and such successors or assigns, if any, as may be authorized by the terms and conditions of this Agreement.

   d. **Control Estimate** means the sum of the following: (i) professional fees and (ii) the then-estimated Cost of the Work based on the Construction Documents approved by the Commission and the user Agency. The Control Estimate is the budget estimate against which actual costs will be measured.

   e. **Cost of the Work** means the sum of all trade contractor costs related to construction of the project

   f. **Drawings and Specifications** means the detailed Contract Documents, design drawings and technical specifications, which describe the scope of work to be performed.

   g. **Final Acceptance** means the date on which the Architect has determined that all of the requirements of the Contract Documents, Drawings and Specifications have been completed, including punch list items, shop drawings, manuals and warranties have been delivered and approved, and the final pay applications, waivers and the like submitted and approved.

   h. **Notice of Bid Opportunity** means the letter issued by the Construction Manager to all Trade Contractors on the applicable Commission Qualified List indicating that

drawings and specifications for the applicable trade contract work are available for bid, and the project is ready for use by the user agency.

i. **Preliminary Acceptance** means the date on which the architect and the Commission have determined that the facility is useable for its intended purpose by the User Agency, except for Punch List items.

j. **Project** means the construction and/or improvement of the facility or facilities specified in Schedule B of this Agreement.

k. **Qualified List** means the list of Trade Contractors that the Commission, or the Construction Manager subject to the approval of the Commission, has pre-qualified to submit bid proposals on trade contracts in a particular trade area.

l. **Services** means collectively, the Services duties and responsibilities that are necessary to allow the Construction Manager to provide the Services required by the Commission under this Agreement. The required Services are described in Schedule A of the Agreement.

m. **Successors and Assigns.** Except as otherwise provided herein, this Agreement shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors and assigns.

n. **Technical Personnel** as herein referred to includes partners, officers and all other personnel of the Construction Manager, including technical typists assigned to the Project, exclusive of general office employees.

o. **User Agency** means the municipal corporation that requested the Commission to undertake the construction and/or improvement of the Project.

3. **Incorporation of Documents**. The documents identified below in this paragraph are hereby incorporated in and made a part of this Agreement. By executing this Agreement, the Construction Manager acknowledges and agrees that the Construction Manager is familiar with the contents of each of such documents and will comply fully with all applicable portions thereof in performing the Services.

a. **Contract Documents**. The plans and specifications for the Project (to the extent that plans and specifications for the Project have been prepared) as set forth and described on Schedule B to this Agreement (the "Contract Documents"), which is incorporated in this Agreement.

b. **Trade Contract Documents**. The required documents, as set forth in Appendix 1, which the Construction Manager must utilize, in substantially the same format, in all bid packages prepared by the Construction Manager and in all trade contracts entered into between the Construction Manager and trade contractors for the Project.

c. **Policies Concerning MBE and WBE and Local Business Preference.** The Commission's policies concerning utilization of Minority Business Enterprises ("MBE") and Women Business Enterprises ("WBE"), as the same may be revised from time to time, as set forth in Appendix 2.

4. **Employment and Performance Standards.**

a. **Engagement**. The Commission hereby engages the Construction Manager, and the Construction Manager hereby accepts such engagement, to provide the Services described in Schedule B to this Agreement, as the same may be amended from time to time by mutual agreement of the Commission and the Construction Manager.

b. Personnel

(i) **Adequate Staffing**. Construction Manager must, upon receiving a fully executed copy of this Agreement, assign and maintain for the duration of this Agreement an adequate staff of competent personnel that is fully equipped, licensed as appropriate, available as needed, qualified and assigned exclusively to perform the Services. Construction Manager must include among its staff the Key Personnel and positions as identified below. The level of staffing may be revised from time to time by notice in writing from Construction Manager to the Commission and with prior written consent of the Commission.

(ii) **Key Personnel**. Construction Manager must not reassign or replace Key Personnel without the written consent of the Commission. **"Key Personnel"** means those job titles or roles and the persons assigned to those positions as identified below in this subsection. The Commission may at any time in writing notify Construction Manager that the Commission will no longer accept performance of Services under this Agreement by one or more Key Personnel listed. Upon that notice Construction Manager must immediately suspend the key person or persons from performing Services under this Agreement and must replace him or them with a person or persons with comparable professional credentials and experience. Such replacements are subject to approval by the Commission. The Construction Manager Key Personnel are listed in Schedule E of this Agreement.

c. **Nondiscrimination**. The Construction Manager agrees that in performing this Agreement the Construction Manager will not discriminate against any worker, employee, applicant for employment, or any member of the public, because of race, color, creed, national origin, gender, age, or disability, or otherwise commit an unfair labor practice. The Construction Manager certifies that he/she is familiar with, and will comply with, all applicable provisions of the Civil Rights Act of 1964, 28 U.S.C. § 1447, 42 U.S.C. §§ 1971, 1975a-1975d, 2000a to 2000h-6

(1992); the Age Discrimination in Employment Act of 1967, 29 U.S.C. §§ 623-634 (1992); the Americans with Disabilities Act of 1990, 29 U.S.C. § 706, 42 U.S.C. §§ 12101-12213, 47 U.S.C. §§ 152, 221, 225, 611 (1992); 41 C.F.R. § 60 (1992); reprinted in 42 U.S.C. 2000(e) note, as amended by Executive Order No. 11,375 32 Fed. Reg. 14,303 (1967) and by Executive Order No. 12,086, 43 Fed. Reg. 46,501 (1978); the Age Discrimination Act, 43 U.S.C. Sec. 6101-6106 (1981); P.L. 101-336; 41 C.F.R. part 60 *et seq.* (1990); the Illinois Human Rights Act, 775 ILCS 5/1-101 *et seq.* (1990), as amended; the Discrimination in Public Contracts Act, 775 ILCS 10/0.01 *et seq.* (1990), as amended; the Environmental Barriers Act., 410 ILCS 25/1 *et seq;* and the Chicago Human Rights Ordinance, Chapter 2-160, Section 2-160-010 *et seq.* of the Municipal Code (1990), as amended. The Construction Manager further agrees to furnish such reports and information as may be requested by the Commission, the Illinois Department of Human Relations, or any other administrative or governmental entity overseeing the enforcement or administration of, or compliance with, the above mentioned laws and regulations.

d. **Employment Procedures, Preferences and Compliances**. Salaries of employees of the Construction Manager performing work under this Agreement shall be paid unconditionally, and not less often than once a month, without deduction or rebate on any account except such payroll deductions as are mandatory or permitted by applicable law or regulations. The Construction Manager certifies that he/she is familiar with, and will comply with, all applicable provisions of 820 ILCS 130/0.01 through 130/12 thereof (Prevailing Wage Act), 30 ILCS 570/1 through 570/7 (Employment of Illinois Workers on Public Works Act) and 30 ILCS 560/0.01 through 560/7 (Public Works Preference Act). The Construction Manager shall also comply with all applicable "Anti-Kickback laws and regulations, including the "Anti-Kickback" Act of 1986, 41 U.S.C. §§ 51-58 (1992); 18 U.S.C. § 874 (1992); 40 U.S.C. § 276c (1986) and the Illinois Criminal Code of 1961 720 ILCS 5/33E-1 *et. seq.* If, in the performance of this Agreement, there is any direct or indirect "kick-back", as defined in any of the above mentioned laws and regulations, the Commission may withhold from the Construction Manager, out of payments due to the Construction Manager, an amount sufficient to pay any underpaid employees the difference between the salaries required hereby to be paid and the salaries actually paid such employees for the total number of hours worked. The amounts withheld may be disbursed by the Commission for and on account of the Construction Manager to the respective employees to whom they are due, as determined by the Commission in its sole discretion.

e. **Compliance with Policies Concerning MBE and WBE.** Without limiting the generality of the requirements or the policies of the Commission referred to in paragraph 2 above, the Construction Manager agrees to (i) use best efforts to utilize Minority Business Enterprises for not less than 25%, and Women Business Enterprises for not less than 5% of the value of the Services provided by the Construction Manager and (ii) engage Minority Business Enterprises for not less than 25%, and Women Business Enterprises for not less than 5% of the total value

of all trade contractor work, in accordance with the Resolution passed by the Board of Commissioners of the Commission on October 1, 2004, concerning participation of Minority Business Enterprises and Women Business Enterprises on contracts awarded by the Commission. Construction Manager further agrees to furnish to the Commission such reports and other information concerning compliance with such Resolution and this Agreement, as may be requested by the Commission from time to time.

f. **No Damages for Delays.** The Construction Manager agrees that no charges for damages or claims for damages due to delays shall be asserted by it against the Commission for any delays or hindrances from any cause whatsoever during the progress of any portion of the Services. Such delays or hindrances, if any, shall be compensated for by an extension of time to complete the Services, for such reasonable period as may be mutually agreed upon between the parties, it being understood, however, that the Agreement of the Commission to allow the Construction Manager to complete the Services or any part of them after the time provided for the completion thereof herein shall in no way operate as a waiver on the part of the Commission of any of its rights hereunder.

g. **Records.** The Construction Manager shall maintain accurate and complete records of expenditures, costs and time incurred by the Construction Manager and by trade contractors and consultants engaged by the Construction Manager in connection with the Project and the Services. Such records shall be maintained in accordance with recognized commercial accounting practices. The Commission may examine such records at the Construction Manager's offices upon reasonable notice during normal business hours. The Construction Manager shall retain all such records for a period of not less than five calendar years after the termination of this Agreement.

h. **Time of Essence.** The Construction Manager acknowledges and agrees that time is of the essence in the performance of this Agreement and that timely completion of the Services is vital to the completion of the Project by the Commission. The Construction Manager agrees to use its best efforts to expedite performance of the Services and performance of all other obligations of the Construction Manager under this Agreement and any other agreements entered into by the Commission which are managed or administered by the Construction Manager as a result of the Construction Manager's engagement hereunder.

i. **Compliance with Laws.** In performing its engagement under this Agreement, the Construction Manager shall comply, and shall require trade contractors and consultants engaged by the Construction Manager for this Project to comply, with all applicable federal, state and local laws, including but not limited to, those referenced in subparagraphs (b) and (c) above and in the documents referred to in paragraph 2 of this Agreement.

j. **Progress Meetings.** Meetings to discuss the progress of the Project and/or to review the performance of the Construction Manager and its trade contractors and consultants will be scheduled upon the Commission's request, at mutually agreeable times and locations, and the Construction Manager agrees to cause such meetings to be attended by appropriate personnel of the Construction Manager , its trade contractors and consultants, engaged in performing or having knowledge of the Project.

k. **Defects in Project.** The Construction Manager shall notify the Commission immediately regarding any significant problems in connection with the Project including, but not limited to, construction defects, cost overruns or scheduling delays.

l. **Performance Standard.** The Construction Manager represents and agrees that the Services performed under this Agreement will proceed with efficiency, promptness and diligence and will be executed in a competent and thorough manner, in accordance with reasonable professional standards of skill and diligence in the field. The Construction Manager further agrees that it will assign to the Project at all times during the term of this Agreement the number of experienced, appropriately trained employees necessary for the Construction Manager to perform the Services in the manner required hereunder. In addition the Construction Manager will cause the construction work to be performed in accordance with the requirements of Book 1.

m. **Changes (Amendments).** The Commission may from time to time, request changes to the terms of the Agreement or in the Scope of Services of the Construction Manager to be performed hereunder. Such changes, including any increase or decrease in the amount of compensation and revisions to the duration of the Services, which are mutually agreed upon by and between the Commission and Construction Manager, shall be incorporated in a written amendment to this Agreement. The Commission shall not be liable for any changes absent such written amendment.

n. **Energy Conservation Ordinance**. Whenever the services of the Construction Manager require design of new buildings and structures, addition or alteration of existing buildings and structures or portion thereof, Construction Manager must comply with the provisions of the Energy Conservation Ordinance, Chapter 18-13 of the Municipal Code of Chicago. The Construction Manager shall also select and/or recommend for installation by contractor energy-efficient mechanical, service water-heating, electrical distribution and illumination systems and equipment for the effective use of energy in these buildings and structures.

5. **Term.**

a. **Duration**. The term of this Agreement shall begin on the Commencement Date of Services, specified in Schedule A of this Agreement and, subject to the provisions of subparagraph (b) below, shall expire upon completion of the Services and acceptance thereof by the Commission or, if the Services are of an ongoing nature, on the Completion Date of Services specified in such Schedule A. The Commission and the Construction Manager may, from time to time, by mutual agreement, extend the term of this Agreement by amending Schedule A hereto.

b. **Termination or Suspension by the Commission**. The Commission shall have the right, at any time, to terminate the term of this Agreement, with or without cause, by written notice given to the Construction Manager at least thirty (30) days prior to the effective date of termination. In addition, the Commission shall have the right, at any time and from time to time, with or without cause, to suspend the performance of the Construction Manager hereunder with respect to all or any part of the Services, by written notice given to the Construction Manager at least five (5) days prior to the effective date of suspension. Termination or suspension of this Agreement shall not relieve the Construction Manager from liability for the performance of any obligation of the Construction Manager under this Agreement performed or to have been performed by the Construction Manager on or before the effective date of termination or suspension. Provided the Construction Manager is not in default under this Agreement at the time of termination or suspension, the Commission agrees to pay to the Construction Manager, in accordance with the terms of this Agreement, all compensation and reimbursements due to the Construction Manager for periods up to the effective date of termination or suspension. In no event shall the Commission be liable to the Construction Manager for any loss, cost or damage which the Construction Manager or any of its trade contractors or consultants or any other party may sustain by reason of the Commission terminating or suspending this Agreement as provided herein; provided, however, that the Commission may, in its sole discretion, reimburse the Construction Manager for actual expenses approved by the Commission.

c. **Termination by Construction Manager**. If the Project, in whole or substantial part, is stopped for a period longer than thirty (30) days under an order of any court or other governmental authority having jurisdiction of the Project, or as a result of an act of government, such as a declaration of national emergency making materials unavailable, through no act or fault of the Construction Manager, or if the Commission fails to make any payment or perform any other obligation hereunder, the Construction Manager shall have the right to terminate this Agreement, by written notice given to the Commission at least seven (7) days prior to the effective date of termination, and shall have the right to recover from the Commission all compensation and reimbursements due to the Construction Manager for periods up to the effective date of termination.

d. **Force Majeure.** Neither of the parties shall be liable to the other for any delay or failure in performance hereunder due to a force majeure event. If a force majeure event occurs, the party delayed or unable to perform shall give prompt notice to the other party, and the Commission may, at any time during the continuation of the force majeure event, elect to suspend the performance of the Construction Manager under this Agreement for the duration of the force majeure event. The Commission shall not be obligated to pay for Services to the extent and for the duration that performance thereof is delayed or prevented by the force majeure event, but, provided the Construction Manager is not in default of any obligation of the Construction Manager hereunder, the Commission shall pay to the Construction Manager, according to the terms hereof, all compensation and reimbursements due to the Construction Manager for periods up to the effective date of suspension. The term "force majeure" means an extraordinary event or effect that the parties could not have anticipated or controlled and that renders performance impossible or impracticable for the duration of the event or effect. Such events or effects include but are not limited to: extraordinary acts of nature, such as tornadoes; or of people, such as acts of terrorism; or of governments, such as imposition of martial law. The term does not include, for example, typical Chicago inclement weather (i.e. weather the severity of which is less than a standard deviation from the 5-year mean for the Chicago Midway area as established by the National Oceanic and Atmospheric Administration) or labor strikes.

6. **Compensation of the Construction Manager and Reimbursement for Expenses.** The Commission shall compensate the Construction Manager in the amount and the manner set forth in Schedule C to this Agreement.

7. **Rights and Obligations of Commission.** In connection with the administration of the Project by the Commission and the performance of this Agreement by the Construction Manager, the Commission shall have the following rights and obligations, in addition to those provided elsewhere in this Agreement:

a. **Information.** The Commission shall provide the Construction Manager all reasonably requested information concerning the Commission's and the User Agency's requirements for the Project and the Services.

b. **Review of Documents.** Subject to the provisions of subparagraph 3 (e) above, the Commission agrees to make a reasonable effort to examine documents submitted by the Construction Manager and render decisions pertaining thereto with reasonable promptness.

c. **Site Data.** To the extent the Commission determines to be necessary for the Construction Manager to perform the Services, the Commission may furnish, or may authorize the Construction Manager to obtain from a consultant approved by the Commission as Reimbursable Expenses: (i) a certified survey of the site or sites; (ii) information concerning locations, dimensions and data pertaining to

existing buildings and other improvements; (iii) title information; (iv) information concerning available service and utility lines. The Construction Manager shall not be liable to the Commission for the substantive content of such surveys or information obtained from a consultant engaged by the Construction Manager and approved by the Commission, provided that the Construction Manager has exercised reasonable diligence in the selection of the consultant.

d. **Tests and Reports**. To the extent required for the Construction Manager to perform the Services, the Commission may furnish structural, civil, chemical, mechanical, soil and/or other tests and reports; however, the Commission may authorize the Construction Manager to procure such tests and reports from a consultant approved by the Commission as Reimbursable Expenses. The Construction Manager shall not be liable to the Commission for the substantive content of such tests and reports obtained from a consultant engaged by the Construction Manager and approved by the Commission, provided that the Construction Manager has exercised reasonable diligence in the selection of the consultant and provided that the Construction Manager has caused the consultant to purchase and maintain professional liability insurance in accordance with paragraph E.6 of Schedule E protecting the Commission, the User Agency, and the Construction Manager from any loss or claim arising out of the consultant's performance.

e. **Legal, Auditing and other Services**. The Commission shall arrange and pay for such legal, auditing, insurance counseling and other services as the Commission, at its sole discretion, may determine to be required for the Project. Such payments shall not include legal or auditing expenses arising out of or relating to any errors or omissions, or claimed errors or omissions, of the Construction Manager.

f. **Designated Representatives**. The Commission may designate, at its sole discretion, one or more representatives authorized to act in its behalf.

g. **Indemnities**. The Commission shall require, by appropriate provision in each contract let by the Commission after the date of this Agreement with respect to the Project that the contractor(s) or consultant(s) thereunder shall indemnify, save and hold harmless the Commission, the User Agency and the Construction Manager and their respective commissioners, board members, officers, agents and employees, from all claims, demands, actions and the like, of every nature and description, made or instituted by third parties, arising or alleged to arise from the services performed pursuant to such contract, and that the contractor or consultant thereunder shall purchase and maintain during the life of such contract such insurance as the Commission may require.

h. **Ownership of Documents**. All documents, data, studies and reports prepared by the Construction Manager or any party engaged by the Construction Manager,

pertaining to the Project and/or the Services, shall be the property of the Commission.

i. **Audits.** The Commission shall have the right to audit the books of the Construction Manager and its trade contractors and consultants on all subjects relating to the Project and/or the Services.

8. **Indemnification of Commission.** The Construction Manager hereby agrees to indemnify, keep and save harmless the Commission and the User Agency and their respective commissioners, board members, officers, agents, officials and employees, from and against all claims, demands, suits, losses, costs and expenses, including but not limited to, the fees and expenses of attorneys, that may arise out of or be based on any injury to persons or property that is or is claimed to be the result of an error, omission or negligent or willfully wrongful act of the Construction Manager or any person or firm employed by the Construction Manager. The Construction Manager shall require its trade contractors and consultants to indemnify, save and hold harmless the Commission and the User Agency and their respective commissioners, board members, officers, agents, officials and employees, from and against all claims, demands, suits, losses, costs and expenses, including but not limited to, the fees and expenses of attorneys, that may arise out of or be based on any injury to persons or property that is or is claimed to be the result of an error, omission or negligent or willfully wrongful act of the trade contractors or consultants or any person or firm employed by them.

9. **Insurance to be Maintained by the Construction Manager.** The Construction Manager shall purchase and maintain at all times during the performance of Services hereunder, for the benefit of the Commission, the User Agency and the Construction Manager, insurance coverage which adequately insures the Commission, the User Agency and the Construction Manager against claims and liabilities which could arise out of the performance of such Services, including but not limited to, the insurance coverages set forth in Schedule E to this Agreement. The Construction Manager shall also require its trade contractors and consultants to purchase and maintain at all times during the performance of the Services hereunder, for the benefit of the Commission, the User Agency and the Construction Manager, the trade contractors and consultants, insurance coverage which adequately insures the Commission, the User Agency, the Construction Manager, the trade contractors and consultants against claims and liabilities which could arise out of the performance of such Services, including but not limited to, the insurance coverages set forth in Schedule D to this Agreement.

10. **Default.**

a. **Events of Default.** Any one or more of the following occurrences shall constitute an Event of Default under this Agreement:

i. Failure or refusal on the part of the Construction Manager duly to observe or perform any obligation or Agreement on the part of the Construction

Manager contained in this Agreement, which failure or refusal continues for a period of ten (10) days, or such longer period as the Commission, in its sole discretion, may determine, if such failure is not capable of being cured within such ten (10) day period, after the date on which written notice thereof shall have been give to the Construction Manager by the Commission;

ii. Any representation or warranty of the Construction Manager set forth herein or otherwise delivered pursuant to this Agreement shall have been false in any material respect when so made or furnished;

iii. The Construction Manager becomes insolvent or ceases doing business as a going concern, or makes an assignment for the benefit of creditors, or generally fails to pay, or admits in writing its inability to pay, its debts as they become due, or files a voluntary petition in bankruptcy, or is adjudicated a bankrupt or an insolvent, or files a petition seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar arrangement under any present or future statute, law or regulation relating to bankruptcy or insolvency, or files an answer admitting the material allegations of a petition filed against it in any such proceeding, or applies for, consents to or acquiesces in the appointment of a trustee, receiver, liquidator or other custodian of it or of all or any substantial part of its assets or properties, or if it or its principals shall take any action in furtherance of any of the foregoing; or

iv. There shall be commenced any proceeding against the Construction Manager seeking reorganization, arrangement, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation relating to bankruptcy which is not vacated, stayed, discharged, bonded or dismissed within sixty (60) days thereof, or there shall be appointed, without the Construction Manager's consent or acquiescence, any trustee, receiver, liquidator or other custodian of Construction Manager or of all or any substantial part of the Construction Manager's assets and properties, and such appointment shall not have been vacated, stayed, discharged, bonded or otherwise dismissed within sixty (60) days thereof.

b. **Remedies.** If an Event of Default shall occur and be continuing, then the Commission may exercise any right, power or remedy permitted to it by law or in equity and shall have, in particular, without limiting the generality of the foregoing, the right to terminate this Agreement upon written notice to the Construction Manager, in which event the Commission shall have no further obligations hereunder or liability to the Construction Manager except as to payment for Services actually received and accepted by the Commission through the effective date of termination. No courses of dealing on the part of the Commission or delay or

failure on the part of the Commission to exercise any right shall operate as a waiver of such right or otherwise prejudice the Commission's rights, powers or remedies.

c. **Remedies not Exclusive.** No right or remedy herein conferred upon or reserved to the Commission is exclusive of any right or remedy herein or by law or equity provided or permitted, but each shall be cumulative of every other right or remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise, and may be enforced concurrently therewith or from time to time.

11. **Disputes**.

a. General. All disputes arising under, related to or in connection with the terms of this Agreement or its interpretation, whether involving law or fact or both, including without limitation questions concerning allowability of compensation, and all claims for alleged breach of contract, shall be presented in writing to the Executive Director for final determination.

b. Procedure. Requests for determination of disputes will be made by the Construction Manager in writing specifically referencing this Section, and will include: 1) the issue(s) presented for resolution; 2) a statement of the respective positions of the Construction Manager and the Project Manager; 3) the facts underlying the dispute; 4) reference to the applicable provisions of the Agreement by page and section; 5) identify any other parties believed to be necessary to the resolution; and 6) all documentation which describes and relates to the dispute. Construction Manager will promptly provide the Executive Director with a copy of the request for determination of the dispute. The Project Manager will have thirty (30) business days to respond in writing to the dispute by supplementing the submission or providing its own submission to the Executive Director. Failure by the Project Manager to respond will not be deemed to be an admission of any allegations made in the request for dispute resolution, but will be deemed to constitute a waiver of the opportunity to respond to such allegation(s), if any. The Executive Director's decision may thereafter be reached in accordance with such other information or assistance as she or he may deem reasonable, necessary or desirable.

c. Effect. The Executive Director's final decision will be rendered in writing no more than forty-five (45) business days after receipt of the response by the Project Manager was filed or was due unless the Executive Director notifies the Construction Manager that additional time for the decision is necessary. The Executive Director's decision will be conclusive, final, and binding on all parties. Construction Manager must follow the procedures set out in this Section and receive the Executive Director's final decision as a condition precedent to filing a complaint in the Circuit Court of Cook County or any other court.

The Construction Manager will not withhold performance of any Services required by the Commission under this Agreement during the dispute resolution period. The Executive Director's written determination will be complied with pending final resolution of the dispute.

12. **Confidentiality**. All of the reports, information, or data prepared or assembled by the Construction Manager under this Agreement are confidential, and the Construction Manager agrees that such reports, information or data shall not be made available to any party without the prior written approval of the Commission. In addition, the Construction Manager shall not, without the prior written consent of the Commission, prepare or distribute any news releases, articles, brochures, advertisements or other materials concerning this Agreement, the Project or the Services. If the Construction Manager is served with a subpoena requiring the production of documents or information which is deemed confidential, the Construction Manager shall immediately notify the Commission in writing and provide a copy of the subpoena to the Commission in sufficient time for the Commission to attempt to quash, or take other action in relation to, the subpoena.

13. **Assignment**. The Construction Manager acknowledges that the Commission is induced to enter into this Agreement by the personal qualifications of the principals, staff and employees of the Construction Manager and agrees, therefore, that neither this Agreement nor any right or obligation hereunder may be assigned by the Construction Manager, in whole or in part, without the prior written approval of the Commission. For purposes of this paragraph, if the Construction Manager undergoes a change in control, the change in control shall be deemed an assignment of the Agreement; a change in control is defined as a transfer of more than 50% of the equity ownership of the Construction Manager during any twelve (12) month period. In the event of an assignment by the Construction Manager without the prior written approval of the Commission, the Commission shall have the right to immediately terminate the Agreement without fault or responsibility. The Construction Manager further acknowledges that the Construction Manager has represented to the Commission the availability of certain members of the Construction Manager's staff who will be assigned to Project, and agrees, therefore, that in the event of the unavailability of such members due to the Construction Manager shall so notify the Commission in writing, and shall assign other qualified members of the Construction Manager's staff, as approved by the Commission, to the Project.

14. **Liquidated Damages**. The Construction Manager shall assess liquidated damages against Trade Contractors for the benefit of the Commission in accordance with the applicable provisions of Appendix 1, such as City Residency, MBE/WBE, and EEO requirements. If the Construction Manager recovers liquidated damages from a Trade Contractor, then Construction Manager shall submit such damages to Commission.

In addition if the work is delayed, the Construction Manager will impose liquidated damages on its Subcontractors for every Day, as provided under their respective subcontracts, the Preliminary Acceptance Date or a milestone completion date is not achieved, provided that such delay is not a result of a justifiable cause permitted under the

Agreement. The specific amount of liquidated damages that the Construction Manager will impose on its subcontractors must be appropriate to the size of the subcontract. Separate liquidated damages amounts must be established for Completion of the Work and Completion of the Punch List Work and will apply for each and every Day that the Subcontractor is in default after the time stipulated in its contract for completing the Work and/or the Punch List.

The Construction Manager is liable to the Commission for liquidated damages in the amount of:
$250.00 per day for work incomplete after the Preliminary Acceptance Date.
$250.00 per day for work incomplete after date for completion of Punch List Work.

The Construction Manager will diligently attempt to recover liquidated damages by deducting the amount thereof out of any moneys due or that may become due the defaulting Subcontractor(s). Liquidated damages collected by the Construction Manager from its Subcontractors for Completion of the Work (Preliminary Acceptance Date) and Completion of the Punch List Work will be available to the Construction Manager to apply for those purposes. Notwithstanding collection or non-collection of liquidated damages from the Subcontractors, this provision does not relieve the Construction Manager from its obligation to complete the Work in accordance with the requirements of the Contract Documents.

15. **Relationship of Parties**. The relationship of the Construction Manager to the Commission hereunder is that of an independent contractor, and the Construction Manager, except to the extent expressly provided to the contrary in Schedule B hereto, shall have no right or authority to make contracts or commitments for or on behalf of the Commission, to sign or endorse on behalf of the Commission any instruments of any nature or to enter into any obligation binding upon the Commission. This Agreement shall not be construed as an agreement of partnership, joint venture, or agency. To the extent that the Construction Manager is expressly authorized in Schedule A to let contracts to trade contractors on behalf of the Commission, the Construction Manager shall disclose the Commission to the Trade Contractors as a third party beneficiary to the contract.

16. **Collateral Assignment.** The Construction Manager shall make a collateral assignment of its agreements with its Architect of Record and other design professionals in favor of the Commission. Within ten days after execution of this Agreement.

17. **General**

a. **Breach, Violation or Default.** All disputes arising under this Agreement or its interpretation, whether involving law or fact or both, or extra Work, and all claims for alleged breach of contract shall, within ten (10) days of commencement of the dispute, be presented in writing by the Construction Manager to the Executive Director for decision. All papers pertaining to claims shall be filed in quadruplicate with the Project Manager. Such notice need not detail the amount

of the claim but shall state the facts surrounding the claim in sufficient detail to identify the claim, together with its character and scope. In the meantime, the Construction Manager shall proceed with the Work as directed. Any claim not presented within the time limit specified within this Article shall be deemed to have been waived, except that if the claim is of a continuing character and notice of the claim is not given within ten (10) days of its commencement, the claim will be considered only for a period commencing ten (10) days prior to the receipt by the Commission of notice thereof.

Within ten (10) days after the Work is completed, the Construction Manager shall submit in detail its claim and proof thereof. Each decision by the Executive Director of the Commission will be in writing.

No suit or action on this Agreement for the recovery of any claim shall be sustainable in any court of law or equity unless commenced within twelve (12) months next after the date the Executive Director formally denies the claim but in no event longer than ninety (90) days after Preliminary Acceptance of the Work.

b. **Construction Manager's Authority.** Execution of this Agreement by the Construction Manager is authorized by a resolution of its Board of Directors, if a corporation, or similar governing document if a partnership or a joint venture, and the signatures(s) of each person signing on behalf of the Construction Manager have been made with complete and full authority to commit the Construction Manager to all terms and conditions of this Agreement, including each and every representation, certification and warranty contained or incorporated by reference in it.

c. **Counterparts.** This Agreement may be executed in any number of counterparts, any of which shall be deemed an original.

d. **Entire Agreement.** This Agreement constitutes the entire understanding and agreement between the parties hereto and supersedes any and all prior or contemporaneous oral or written representations or communications with respect to the subject matter hereof, all of which communications are merged herein. This Agreement shall not be modified, amended or in any way altered except by an instrument in writing signed by both of the parties hereto.

e. **Governing Law.** This Agreement has been negotiated and executed in the State of Illinois and shall be construed under and in accordance with the internal laws of the State of Illinois.

f. **No Waiver.** The waiver by either party of any breach of this Agreement shall not constitute a waiver as to any succeeding breach.

g. **Notices.** All notices required to be given hereunder shall be given in writing and shall be hand delivered or sent by United States certified or registered mail, postage

prepaid, addressed to Commission and to the Construction Manager at their respective addresses set forth above. If given as herein provided, such notice shall be deemed to have been given on the date of delivery, if delivered by hand, and on the second business day after mailing, if given by mail. The Commission or the Construction Manager may, from time to time, change the address to which notices hereunder shall be sent by giving notice to the other party in the manner provided in this subparagraph.

h. **Performance and Payment Bond**. The Construction Manager shall do either of the following: (i) provide to the Commission prior to commencement of construction a Performance and Payment Bond to cover all trade contract work for the Project, or (ii) secure from each Trade Contractor that is awarded a trade contract. a Performance and Payment Bond at the time of the opening of the Trade Contractor's bid proposal.

i. **Severability.** In the event that any provisions of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

j. **Successors and Assigns.** Except as otherwise provided herein, this Agreement shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors and assigns.

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IN WITNESS WHEREOF, this Agreement has been duly executed by the parties hereto as of the 6th day of September, 2005.

PUBLIC BUILDING COMMISSION OF CHICAGO

ATTEST:

By: _____
Secretary

By: _____
Chairman

RODRIGUEZ & ASSOCIATES, INC.

By: _____

Title: Secretary/Assistant Secretary
(select one)

By: _____

Title: President/~~Vice President~~
(select one)

Subscribed and sworn to before me
this 19th day of August, 2005.

_____
Notary Public

(seal)

OFFICIAL SEAL
JULIA A SPORTOLARI
NOTARY PUBLIC STATE OF ILLINOIS
MY COMMISSION EXP. AUG. 30,2005

Schedule A
Project Name and Scope of Services

New 120th and Peoria Salt Dome
120th and Peoria Streets
Chicago, IL

Scope of Services

The Construction Manager shall perform, or cause to be performed, the Services described in this Schedule. The Services shall be performed in the following phases: Design, Pre-construction, Bidding, Construction, and Project Closeout. If the Commission and the Construction Manager agree, the Construction Phase may commence before the Pre-construction Phase is completed, in which case both phases will proceed concurrently. The term of this Agreement shall be as follows:

Commencement Date of Services	**Notice to Proceed**
Preliminary Acceptance Date	**December 1, 2005**
Completion of Punch List Work	**May 31, 2006**
Completion Date of Services	**May 31, 2006**

Services to be performed:

A.1 Design Phase

A.1.1 Prepare preliminary budget estimates at the completion of the Programming Stage and review with the Commission and the User Agency.

A.1.2 Consult with the Commission and the User Agency regarding the goals and requirements of the project. Develop the construction bid packages and the necessary construction phases, including all construction documents.

A.1.3 Review the requirements of any federal, state, or local agencies having jurisdiction over various aspects of the project with the Commission regarding costs and alternatives.

A.1.4 Throughout the course of the project conduct weekly meetings with the Commission, User Agency and appropriate design team members. Prepare and distribute minutes of all project meetings within five (5) business days.

A.1.5 Prepare budget estimates at the completion of development of Construction Documents.

A.1.6 Prepare a cash flow analysis of the project.

A.1.7 Recommend potential value engineering alternatives throughout the Design Phase.

A.1.8 Review the progress of preparation of the drawings and advise the design team with respect to availability and price of material, avoidance of jurisdictional disputes and feasibility of details.

A.1.9 Develop an overall design schedule and coordinate the schedule with the Commission's desired project completion date.

A.1.10 Review the Commission's project budget and report to the Commission the status of project cost at milestones approved by the Commission prior to completion of design documents.

A.2 Pre-construction Phase

A.2.1 Provide a design and construction schedule showing completion of construction, no later than the Preliminary Acceptance date.

A.2.2 Schedule and attend regular meetings with the Commission and the design team. Prepare and distribute minutes of all project meetings within five (5) business days of meeting date.

A.2.3 Consult with the Commission and the design team regarding site use and improvements, the selection of materials, building systems and equipment.

A.2.4 Consult with the Commission and the User Agency regarding the goals and requirements of the Project.

A.2.5 Review the requirements of any federal, state, or local agencies having jurisdiction over various aspects of the Project with the Commission.

A.2.6 Provide recommendations to the Commission on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost including estimates of alternative designs or materials, preliminary budgets and possible economies.

A.2.7 Prepare, and periodically update, a preliminary project schedule for the design team's review and the Commission's approval after project requirements have been sufficiently identified.

A.2.8 Coordinate and integrate the preliminary project schedule with the services and activities of the Commission.

A.2.9 As design proceeds, update the preliminary project schedule to indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, submittal of the Control Estimate, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead time procurement, the Commission's occupancy requirements showing portions of the Project having occupancy priority, and the estimated date of Preliminary Acceptance.

A.2.10 Provide recommendations to the Commission if preliminary project schedule updates indicate that previously approved schedules may not be met.

A.2.11 Develop all required construction.

A.2.12 Prepare budget estimates for review and approval by the Commission at the following intervals:

A.2.12.1 After the Commission has sufficiently identified the Project requirements and the design team has prepared other basic design criteria.

A.2.12.2 At appropriate intervals agreed to by the Commission and the Construction Manager.

A.2.12.3 After the Construction Documents have been completed submit for approval.

A.2.13 Provide periodic budget reports showing:

A.2.13.1 An overview of the current budget estimate compared to the Commission's budget.

A.2.13.2 A summary of all approved cost revisions.

A.2.13.3 A cash flow analysis based on the latest budget estimate information, including design services and any other costs.

A.2.14 Review each budget estimate with the Commission and the design team.

A.2.14.1 Make appropriate adjustments to the current budget estimate if the Commission or the design team discovers any inconsistencies or inaccuracies in the information presented.

A.2.15 Provide recommendations to the Commission and the design team if any budget estimate submitted to the Commission exceeds previously approved budget estimates or the Commission's budget.

A.2.16 Provide value engineering alternatives to the Commission and the design team at the completion of the Schematic Design, Design Development and Construction Document phases, or prior to the completion of these phases as required by the Commission.

A.2.17 Review the revised Drawings and Specifications at each stage of the design process and confirm that all assumptions, clarifications and value engineering alternatives previously agreed to by the Commission, the design team and the Construction Manager have been incorporated. Promptly notify the design team and the Commission if the revised Drawings and Specifications are inconsistent with the agreed upon assumptions, clarifications and value engineering alternatives.

A.2.18 Provide recommendations to the Commission and the design team for constructability that may decrease the duration of the construction schedule and/or decrease the construction cost.

A.2.19 Provide the Commission and the design team with a schedule for procurement of long-lead time items to meet the Project schedule. The Construction Manager shall procure and expedite the delivery of such long-lead time items in order to meet the Project schedule.

A.2.20 Where appropriate, develop bidding alternatives on materials, construction techniques, fabrication and installation methods, to take advantage of current conditions in the construction marketplace.

A.2.21 Develop and implement a detailed cost control system that will provide the Commission with timely information as to the anticipated total Cost of the Work.

A.2.21.1 Prepare and update a cash flow analysis for the Work.

A.2.21.2 Create a cost control system that compares the project budget with the actual cost for activities in progress and estimates for uncompleted tasks and proposed changes.

A.2.21.3 Report the anticipated total Cost of the Work to the Commission in writing monthly.

A.2.22 If the Drawings and Specifications are not finished at the time the budget estimates are prepared, the Construction Manager shall provide allowances within the current budget estimate for further development of the Drawings and Specifications by the design team that are consistent with the Contract Documents and reasonably inferable therefrom. Such allowances for further development does

not include such things as changes in scope, systems, kinds or quality of materials, finishes or equipment.

A.2.23 Upon the Commission's approval of the Construction Documents, the Contract Documents shall consist of (i) this Agreement, (ii) General Conditions, Special Conditions and Project Specifications – Division 1 – Project Requirements) and (iii) modifications issued subsequent to the Commission's approval. If anything in the other Contract Documents is inconsistent with this Agreement, this Agreement shall govern.

A.3 Bid Phase

A.3.1 Review the list of bid packages for all materials and work and provide full assignment, coordination and responsibility for the work.

A.3.2 Review bid packages for long lead-time items and confirm inclusion of all requirements for special receipt, handling, and installation of materials and equipment.

A.3.3 Prepare a Notice of Bid Opportunity and deliver, via fax and/or Registered Mail, to all trade contractors on the applicable Commission Qualified List for the scope of the work to be bid.

A.3.4 If a Commission Qualified List does not exist for the scope of work to be bid, then the Construction Manager shall either:

A.3.4.1 Bid the work in accordance with Section 20 of the Public Building Commission Act, 50 ILCS 20/20; or

A.3.4.2 Develop a Qualified List of trade contractors in accordance with the Commission's qualification procedures. The scope of work shall be bid in accordance with paragraph B.3.3 after a Qualified List has been established by the Construction Manager.

A.3.5 Maintain accurate records of the bid notification process, as identified in paragraphs A.3.3 and A.3.4, for each scope of work. Provide a copy of these records to the Commission in a timely manner but in no event shall these records be presented to the Commission less than fourteen (14) days prior to the bid opening.

A.3.6 Provide copies of each bid package and the corresponding Qualified List of trade contractors eligible to bid on the scope of work to the following agencies when the Notice of Bid Opportunity letters are delivered (see paragraph A.2.3) or when the bidding opportunity is publicly advertised pursuant to 50 ILCS 20/20:

African American Contractors Assoc.
3449 S. Michigan

Association of Asian Construction Enterprises
333 N. Ogden

Black Contractors United
2860 East 76th Street, Suite 2B

Federation of Women Contractors
330 S. Wells, Suite 1110

Chicago Urban League
4510 South Michigan Avenue

Latin American Chamber of Commerce
3512 West Fullerton

Hispanic American Construction Industry Association
641 W. Lake Street, Suite 300

A.3.7 Schedule and administer pre-bid conferences and respond to questions raised during the bid period, outline the proposed approach to the Project, project logistics, manpower requirements, schedule and sequence of operations; and prepare and distribute minutes of the pre-bid meetings.

A.3.8 Evaluate base bids, alternate proposals, unit prices, and such other data as may be pertinent.

A.3.8.1 Determine the lowest responsive bidder for a scope of work in accordance with the criteria and requirements of the Trade Contract Documents (Refer to Appendix 1).

A.3.9 Recommend the award of a trade contract for each scope of work to the Commission in writing.

A.3.10 After the Commission approves the award of a trade contract for a specific scope of work in writing, the Construction Manager shall execute a trade contract with the successful bidder on behalf of the Commission. The trade contract shall contains all of the Commission's requirements, including, but not limited to, MBE/WBE participation, EEO requirements and City Residency requirements, as indicated in the Trade Contract Documents (refer to Appendix 1).

A.4 Construction Phase

A.4.1 The Construction Phase shall commence on the earlier of:

A.4.1.1 the Commission's approval of the Control Estimate and issuance of Notice to Proceed; or

A.4.1.2 the Commission's first authorization to the Construction Manager to award a trade contract, or to issue a purchase order for materials or equipment required for the Project.

A.4.2 Prior to the Commission's approval of the Control Estimate and issuance of a Notice to Proceed, the Construction Manager shall not incur any costs to be reimbursed as part of the Cost of the Work, except as the Commission may specifically authorize in writing.

A.4.3 Schedule and conduct meetings with the Commission, design team, Construction Manager and appropriate trade contractors to discuss the status of the Work. Prepare and distribute minutes of all project meetings within five (5) business days of meeting date.

A.4.3.1 Prepare and promptly distribute minutes of all meetings.

A.4.4 Promptly after the Commission's approval of the Control Estimate, prepare a schedule in accordance with Project Specifications – Division 1 – Project Requirements Section 01200, Paragraph 3.01 of the General Conditions, including the Commission's occupancy requirements, as contained in Appendix 1.

A.4.5 Provide monthly written reports to the Commission and the design team on the progress of the entire Project, maintain a daily log containing a record of weather, trade contractors working on the site, number of workers, work accomplished, problems encountered and other similar relevant data as the Commission may reasonably require, and make available to the Commission and the design team.

A.4.6 Verify the completeness and accuracy of Construction Documents and coordinate the various parts of the Work so that no part shall be left in an unfinished or incomplete condition.

A.4.7 Provide sufficient forces and work shifts as may be required to ensure completion of the Work in accordance with the Project schedule and cooperate fully with the Commission, the design team, and the User Agency during construction operations to minimize conflicts, interference, and to facilitate occupant usage and operations.

A.4.8 Continuously protect the Work and the Commission's property from damage, injury or loss.

A.4.9 Implement a safety program to ensure the safety of the workers on the site, and prevent accidents or injury to any persons on, about, or adjacent to the site where the Work is being performed.

A.4.10 Provide an experienced full-time field staff responsible for day-to-day on-schedule and on-budget performance of the construction work.

A.4.11 Perform site observations of the trade contractor(s) to ensure that the Work is progressing on schedule.

A.4.12 Review the adequacy of the trade contractors' supervision, personnel and equipment and the availability of necessary materials and supplies. Where inadequate, direct that the necessary action be taken to remedy the deficiency.

A.4.13 Obtain the building permit, fire alarm permit, driveway permit, and all other permits as required by the City of Chicago and public utilities.

A.4.14 Maintain all Project documentation systems at the job site. These systems shall be used to organize and administer document updates and to continuously keep the trade contractors up-to-date with the latest design conditions.

A.4.15 Establish and maintain on the site a complete library of all Construction Documents, addenda, bulletins, scope changes, approved shop drawings and material samples.

A.4.16 Expedite and assist in the clarification of the Construction Documents and provide additional information as required to facilitate trade contractor decisions on-site. In the event that the interpretation of the meaning and intent of the Construction Documents becomes necessary during construction, ascertain the design team's interpretation and transmit such information to the trade contractor.

A.4.17 Develop a logistics plan, consistent with the overall Project schedule and Control Estimate which allows the trade contractors to complete their work in a coordinated, efficient manner with minimal impact to the neighboring occupants and traffic in and around the job site.

A.4.18 Maintain and coordinate a shop drawing and sample submission system for timely approval by the design team.

A.4.19 Develop, maintain and implement a master project schedule and solicit trade contractor schedule updates for incorporation into the Project schedule.

A.4.20 Coordinate with all governmental and regulatory agencies regarding required permits, licenses and certificates, and schedule all inspections required by those agencies.

A.4.21 Prepare and maintain a cost reporting and forecasting system to track the Cost of the Work and advise the Commission of changes which impact the Cost of the

Work. Provide monthly reports with complete backup regarding the Cost of the Work.

A.4.22 Solicit proposals from the trade contractors to perform changes in the scope of work and assist the Commission in evaluating the cost of these changes.

A.4.22.1 Review all trade contractor change order requests to ensure that such requests are appropriate.

A.4.22.2 Integrate all change order costs approved by the Commission into the established cost accounting system.

A.4.22.3 Evaluate requests for scope changes required by field conditions and other unforeseen conditions and submit such requests to, and obtain approval from, the Commission prior to instituting any changes to the requirements of the Construction Documents.

A.4.22.4 Evaluate any construction claims originating from the Work and negotiate or otherwise settle all such construction claims.

A.4.22.5 Monitor all changes in the Construction Documents and confirm their approval by the Commission.

A.4.23 Administer the testing, acceptance and turnover of all systems to the Commission, and assist with the move-in process.

A.4.24 Coordinate the procurement and assembly of all required permits, licenses, and certificates from the trade contractors and arrange delivery of same to the Commission.

A.4.25 Review all trade contractor payment applications to verify the accuracy of all such payment applications. After verification, approve and submit payment applications for approval and payment by the Commission.

A.4.26 Administer all payments to the trade contractors and perform all construction accounting consistent with the cost reporting system.

A.4.27 Provide and install such fencing as required by City ordinance; if differtent fencing (size, type or distance) is required by the user agency, Construction Manager must only install that fencing through a change order that reflects the price differential.

A.5 Project Close Out

A.5.1 Conduct a comprehensive preliminary inspection of the Work to verify that the materials furnished and the work performed are in accordance with the Contract Documents.

A.5.2 Participate in the preparation of punch lists indicating the items of the work remaining to be accomplished and complete the punch list work within 30 days of the issuance of the letter of Preliminary Acceptance. If due to weather conditions, planting can not be completed for Preliminary acceptance, then landscape work may be delayed until no later than May 31, 2006 and will be treated as additional punch list work.

A.5.3 Assemble and deliver to the Commission all guarantees, warranties, operating and maintenance manuals required by the Contract Documents.

A.5.4 Coordinate equipment and systems training sessions for User Agency personnel.

A.5.5 Provide recommendations to the Commission as to the withholding of payments to the trade contractors and determine the value of any uncorrected and/or deficient work.

A.5.6 Expedite the preparation of record ("as-built") drawings and operations and maintenance manuals for the Work in accordance with the Contract Documents The record documents will be subject to the approval of the Commission. Submit approved record documents to the Commission upon completion of the Work.

A.5.7 Conduct a comprehensive final inspection of the Work to verify that the materials furnished and the work performed are in full compliance of the Agreement.

Schedule B

Contract Documents

Attachment #1, Book #1 – Standard Terms and Conditions.
Attachment #2, Book #2 – Project Information, Instructions, and Execution Documents.

List of Drawings for 120th & Peoria Salt Dome CM RFP:

B.1. DGS Schematic Site Layout
B.2. Plat of Survey
B.3. Zoning Map
B.4. Sidwell Map
B.5. Comprehensive Site Investigation by Tetra Tech EM, Inc.
B.6. W. Pullman Industrial Redev. Phase II Investigation Report by CDM

Statement of Design Intent:

It is the intent of the User Agency—the City of Chicago's Department of Streets & Sanitation—to use a pre-manufactured, re-locatable type aluminum rib and rubberized fabric dome structure as currently used at 22nd Street & the Dan Ryan Expressway as manufactured by Sprung Instant Structures or equal. This project shall also incorporate a pre-cast type inverted 'T' concrete 'push wall' system as manufactured by Wieser Concrete or equal.

It is also the intent of the User Agency to have use of this salt storage dome for the 2005-2006 winter snow season.

Schedule C

Compensation of Construction Manager

C.1 Construction Manager's Fee for Services

C.1.1 The Construction Manager shall be paid the fixed fee of $1,987,000 for performance of the Services described in Schedule A to this Agreement on a monthly basis commensurate with progress of the Services and the Work in place. There are no separate reimbursables under this Agreement.

C.1.2 The Construction Manager's compensation includes all contractor costs, vendor costs, consultant costs, or any other construction costs, including overhead profit.

C.1.3 The Construction Manager may invoice for 50% of the cost for the Dome, upon delivery at the work site and receipt by Construction Manager, and the final 50% upon completion of installation and acceptance by the Commission.

C.1.4 The Construction Manager may invoice for 100% for the precast concrete and concrete walls, following delivery at the work site, installation by the subcontractor, and acceptance by the Commission. The Construction Manager may request release of retainage for this portion of the work upon acceptance by the Commission of that portion of the Work.

C.2 Compensation for Additional Services

C.2.1 The Commission may order changes in the Work and/or additional services without invalidating the Agreement.

C.2.2 The Commission shall compensate the Construction Manager for Additional Services based upon a *Lump Sum Fee* or a *Time Card Not to Exceed Fee*, as approved by the Commission in writing. In the case of *Time Card* billings, rates of reimbursement for the Construction Manager's employees shall be the actual base salaries paid to the specific employee performing the services not to exceed the maximum Commission salary rates, which include a multiplier of 2.5.

C.2.2.1 The maximum hourly rate including the multiplier the Commission shall pay the Construction Manager for their employees and consultant's employees shall be as follows:

Position Title	Maximum Hourly Rate with Multiplier
Principal	$150.00
Senior Project Manager	$125.00
Project Manager	$115.00
Assistant Project Manager	$80.00
Clerical/Administrative	$50.00

C.2.3 The following items are considered to be a part of the multiplier, and shall not be considered reimbursable expenses:

C.2.3.1 Indirect Personnel Expenses:

C.2.3.1.1 Workmen's Compensation Insurance.
C.2.3.1.2 Social Security Tax.
C.2.3.1.3 Unemployment Insurance.
C.2.3.1.4 Health insurance Benefits.
C.2.3.1.5 Long Term Disability Insurance.
C.2.3.1.6 Other Statutory and Non-Statutory Employee Benefits.
C.2.3.1.7 Pensions and Similar Contributions.

C.2.3.2 Indirect Administrative Expenses:

C.2.3.3 Telephone Service including Local Calls.

C.2.3.4 General and Administrative Expense including Overhead.

C.2.3.5 General Liability, (Excluding costs for Insurance Premiums on Special Consultant(s) and Trade Contractors) Professional Liability, Valuable Papers, Auto and other Insurance as mandated by the Contract.

C.2.3.6 Computer and internet Charges.

C.2.3.7 Postage and Handling.

C.2.3.8 Parking and Mileage.

C.2.3.9 Profit.

C.3 Submission of Invoices for Compensation

C.3.1 The Construction Manager shall submit detailed invoices no more frequently than once every 30 days to the Commission for approval. After approval of the invoices by the Commission, payment shall be remitted to the Construction Manager.

Schedule D

INSURANCE REQUIREMENTS
Construction Manager PS-865
New 120th and Peoria Salt Dome

The Contractor must provide and maintain at Contractor's own expense, until Contract completion and during the time period following final completion if Contractor is required to return and perform any additional work, the minimum insurance coverages and requirements specified below, insuring all operations related to the Contract.

A. INSURANCE TO BE PROVIDED by CONSTRUCTION MANAGER

1) **Workers Compensation and Employers Liability**

Workers Compensation Insurance, as prescribed by applicable law covering all employees who are to provide a service under this Contract and Employers Liability coverage with limits of not less than $500,000 each accident or illness.

2) **Commercial General Liability (Primary and Umbrella)**

Commercial General Liability Insurance or equivalent with limits of not less than $2,000,000 per occurrence for bodily injury, personal injury, and property damage liability. Coverages must include the following: All premises and operations, products/completed operations, separation of insureds, defense, and contractual liability (with no limitation endorsement). The Public Building Commission and the City of Chicago are to be named as additional insureds on a primary, non-contributory basis for any liability arising directly or indirectly from the work.

Subcontractors performing work for Contractor must maintain limits of not less than $1,000,000 per occurrence with the same terms herein.

3) **Automobile Liability (Primary and Umbrella)**

When any motor vehicles (owned, non-owned and hired) are used in connection with work to be performed, the Contractor must provide Automobile Liability Insurance, with limits of not less than $1,000,000 per occurrence for bodily injury and property damage. The Public Building Commission and the City of Chicago are to be named as additional insureds on a primary, non-contributory basis.

4) **Professional Liability**

When any architects, engineers, construction managers or other professional consultants perform work in connection with this Contract, Professional Liability Insurance covering

acts, errors, or omissions must be maintained with limits of not less than $2,000,000. Coverage must include contractual liability. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede, start of work on the Contract. A claims-made policy, which is not renewed or replaced, must have an extended reporting period of two (2) years.

Subcontractors performing work for Contractor must maintain limits of not less than $1,000,000 per occurrence with the same terms herein.

5) **Property**

The Contractor is responsible for all loss or damage to Commission and/or City property at full replacement cost.

The Contractor is responsible for all loss or damage to personal property (including but not limited to materials, equipment, tools, and supplies) owned, rented, or used by Contractor.

6) **Valuable Papers**

When any plans, designs, drawings, specifications and documents are produced or used under this Contract, Valuable Papers Insurance must be maintained in an amount to insure against any loss whatsoever, and must have limits sufficient to pay for the re-creation and reconstruction of such records.

B. INSURANCE TO BE PROVIDED DURING CONSTRUCTION

1) **Workers Compensation and Employers Liability**

Workers Compensation Insurance, as prescribed by applicable law covering all employees who are to provide a service under this Contract and Employers Liability coverage with limits of not less than $500,000 each accident or illness.

2) **Commercial General Liability (Primary and Umbrella)**

Commercial General Liability Insurance or equivalent with limits of not less than $2,000,000 per occurrence for bodily injury, personal injury, and property damage liability. Coverages must include the following: All premises and operations, products/completed operations, (for minimum of two (2) years following project completion), explosion, collapse, underground, separation of insureds, defense, and contractual liability (with no limitation endorsement). The Public Building Commission and the City of Chicago are to be named as additional insureds on a primary, non-contributory basis for any liability arising directly or indirectly from the work.

Subcontractors performing work for Contractor must maintain limits of not less than $1, 000,000 per occurrence with the same terms herein.

3) **Automobile Liability (Primary and Umbrella)**

When any motor vehicles (owned, non-owned and hired) are used in connection with work to be performed, the Contractor must provide Automobile Liability Insurance, with limits of not less than $2,000,000 per occurrence for bodily injury and property damage. The Public Building Commission and the City of Chicago are to be named as additional insureds on a primary, non-contributory basis.

Subcontractors performing work for Contractor must maintain limits of not less than $1,000,000 per occurrence with the same terms herein.

4) **Professional Liability**

When any architects, engineers, construction managers or other professional consultants perform work in connection with this Contract, Professional Liability Insurance covering acts, errors, or omissions must be maintained with limits of not less than $1,000,000. Coverage must include contractual liability. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede, start of work on the Contract. A claims-made policy, which is not renewed or replaced, must have an extended reporting period of two (2) years.

5) **Builders Risk**

When Contractor undertakes any construction, including improvements, betterments, and/or repairs, the Contractor must provide All Risk Builders Risk Insurance at replacement cost for materials, supplies, equipment, machinery and fixtures that are or will be part of the permanent facility. Coverage must include but are not limited to the following: right to partial occupancy, collapse, water including overflow, leakage, sewer backup, or seepage, damage to adjoining or existing property, debris removal, scaffolding, faulty workmanship or materials, mechanical-electrical breakdown, testing, and equipment stored off site or in transit. The Public Building Commission and the City of Chicago are to be named as additional insureds and loss payees

The Contractor is responsible for all loss or damage to Commission and/or City property at full replacement cost.

The Contractor is responsible for all loss or damage to personal property (including but not limited to materials, equipment, tools, and supplies) owned, rented, or used by Contractor.

6) **Railroad Protective Liability**

When any work is to be done, adjacent to or on railroad or transit property, Contractor must provide, with respect to the operations that Contractor or subcontractors perform, Railroad Protective Liability Insurance in the named of railroad or transit entity. The policy must have limits of not less than $2,000,000 per occurrence and $6,000,000 in the aggregate for losses arising out of injuries to or death of all persons, and for damage to or destruction of property, including the loss of use thereof.

C. ADDITIONAL REQUIREMENTS

Contractor must furnish the Public Building Commission Procurement Department, Richard J. Daley Center, Room 200, Chicago, IL 60602, original Certificates of Insurance, or such similar evidence, to be in force on the date of this Contract, and Renewal Certificates of Insurance, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term of this Contract. The Contractor must submit evidence of insurance to the Public Building Commission prior to Contract award. The receipt of any certificate does not constitute agreement by the Commission that the insurance requirements in the Contract have been fully met or that the insurance policies indicated on the certificate are in compliance with all Contract requirements. The failure of the Commission to obtain certificates or other insurance evidence from Contractor is not a waiver by the Commission of any requirements for the Contractor to obtain and maintain the specified coverages. The Contractor shall advise all insurers of the Contract provisions regarding insurance. Non-conforming insurance does not relieve Contractor of the obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of the Contract, and the Commission retains the right to stop work until proper evidence of insurance is provided, or the Contract may be terminated.

The Commission and/or City reserve the right to obtain copies of insurance policies and records from the Contractor and/or its subcontractors at any time upon written request.

The insurance must provide for 60 days prior written notice to be given to the Commission in the event coverage is substantially changed, canceled, or non-renewed.

Any deductibles or self-insured retentions on referenced insurance coverages must be borne by Contractor.

The Contractor agrees that insurers waive their rights of subrogation against the Public Building Commission, its employees, elected officials, agents, or representatives and the City of Chicago.

The coverages and limits furnished by Contractor in no way limit the Contractor's liabilities and responsibilities specified within the Contract or by law.

Any insurance or self-insurance programs maintained by the Commission and City of Chicago do not contribute with insurance provided by the Contractor under the Contract.

The required insurance to be carried is not limited by any limitations expressed in the indemnification language in this Contract or any limitation placed on the indemnity in this Contract given as a matter of law.

The Contractor must require all subcontractors to provide the insurance required herein, or Contractor may provide the coverages for subcontractors. All subcontractors are subject to the same insurance requirements of Contractor unless otherwise specified in this Contract.

If Contractor or subcontractor desires additional coverage, the party desiring the additional coverage is responsible for the acquisition and cost. At no additional cost to the PBC, the Owner's Representative, Architect, and other consultants may request to be named as additional insureds to Contractor's policy, and must be responsible for monitoring their additional insured compliance.

The Public Building Commission maintains the right to modify, delete, alter or change these requirements.

APPENDIX 1

PBC Front End Documents Here

- **Bid Documents**
- **General Conditions**
- **Special Conditions**

APPENDIX 2

Public Building Commission Policies Concerning Minority Business Enterprises and Women Business Enterprises

Schedule E

Key Personnel

ACORD CERTIFICATE OF LIABILITY INSURANCE

OP ID: LB
ROBERT-1

DATE (MM/DD/YYYY): 08/26/05

PRODUCER

D&P Insurance Services, Inc.
1530 E. Dundee Road Suite 200
Palatine IL 60074
Phone: 847-934-6100 Fax: 847-934-6186

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED

Rodriguez & Associates Inc
150 N Michigan Ave #2120
Chicago IL 60601

PS-865

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: Hartford Insurance Company	
INSURER B: Chubb American Insurance Co	
INSURER C:	
INSURER D:	
INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	GENERAL LIABILITY					
	X COMMERCIAL GENERAL LIABILITY				EACH OCCURRENCE	$1,000,000
	CLAIMS MADE X OCCUR				DAMAGE TO RENTED PREMISES (Ea occurrence)	$300,000
	X Per Project Agg				MED EXP (Any one person)	$10,000
					PERSONAL & ADV INJURY	$1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER: POLICY X PRO-JECT LOC	83SBAM5108	12/15/04	12/15/05	GENERAL AGGREGATE	$2,000,000
					PRODUCTS - COMP/OP AGG	$2,000,000
A	AUTOMOBILE LIABILITY					
	ANY AUTO				COMBINED SINGLE LIMIT (Ea accident)	$1,000,000
	ALL OWNED AUTOS				BODILY INJURY (Per person)	$
	SCHEDULED AUTOS	83SBAM5108	12/15/04	12/15/05	BODILY INJURY (Per accident)	$
	X HIRED AUTOS				PROPERTY DAMAGE (Per accident)	$
	X NON-OWNED AUTOS					
	GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	$
	ANY AUTO				OTHER THAN AUTO ONLY: EA ACC	$
					AGG	$
A	EXCESS/UMBRELLA LIABILITY				EACH OCCURRENCE	$5,000,000
	X OCCUR CLAIMS MADE	83SBAM5108	12/15/04	12/15/05	AGGREGATE	$5,000,000
	DEDUCTIBLE					$
	RETENTION $					$
						$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				X WC STATU-TORY LIMITS OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?	83WECME2953	12/15/04	12/15/05	E.L. EACH ACCIDENT	$500,000
	If yes, describe under SPECIAL PROVISIONS below				E.L. DISEASE - EA EMPLOYEE	$500,000
					E.L. DISEASE - POLICY LIMIT	$500,000
B	OTHER					
	Professional Liability	EDM5750877-02 CLAIMS-MADE FORM	09/01/04	09/01/05	Agg/Occ Ded.	$2,000,000 $35,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

JOB# PS865, New construction, 859 W. 120th Street, Chicago, IL
Please see attached for list of additional insureds

8-29-05
MS

CERTIFICATE HOLDER

PUBLIC02

PUBLIC BUILDING COMMISSION
RICHARD J. DALEY CENTER
SUITE 200
CHICAGO IL 60602

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

© ACORD CORPORATION 1988

JOB# 99865, New construction, 869 W. 120th Street, Chicago, IL

Additional insured on a primary and non-contributory basis as respects General Liability, Waiver of Subrogation with respect to General Liability, Auto Liability and Work Comp and Additional insured with respect to Automobile and Umbrella Liability:

Public Building Commission
City of Chicago

PS865

INSURANCE BINDER

THIS BINDER IS A TEMPORARY INSURANCE CONTRACT, SUBJECT TO THE CONDITIONS SHOWN ON THE REVERSE SIDE OF THIS FORM.

OP ID: LB | DATE (MM/DD/YYYY): 08/26/2005

AGENCY
D&AP Insurance Services, Inc.
1530 E. Dundee Road Suite 200
Palatine IL 60074
James L. Sulkowski
PHONE (A/C, No, Ext): 847-934-6100 | FAX (A/C, No): 847-934-6186
CODE: | SUB CODE:
AGENCY CUSTOMER ID: BODRI-1

COMPANY
St. Paul Travelers | ISSUED: 3044

EFFECTIVE DATE: 09/01/05 | TIME: 12:01 [X] AM [ ] PM
EXPIRATION DATE: 09/01/06 | TIME: [X] 12:01 AM [ ] NOON

THIS BINDER IS ISSUED TO EXTEND COVERAGE IN THE ABOVE NAMED COMPANY PER EXPIRING POLICY #:

INSURED
Public Building Commission,
City of Chicago, etal.
150 N Michigan Ave #1120
Chicago IL 60601

PS 865

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/PROPERTY (Including Location)
Job #PS865, New construction, 869 W. 120th Street, Chicago, IL

COVERAGES

TYPE OF INSURANCE	COVERAGE/FORMS	LIMITS		
PROPERTY CAUSES OF LOSS: [ ] BASIC [ ] BROAD [X] SPEC	Builders Risk	DEDUCTIBLE: 1,000	CONS %	AMOUNT: $1,600,000
GENERAL LIABILITY [ ] COMMERCIAL GENERAL LIABILITY [ ] CLAIMS MADE [ ] OCCUR	RETRO DATE FOR CLAIMS MADE:	EACH OCCURRENCE $ / DAMAGE TO RENTED PREMISES $ / MED EXP (Any one person) $ / PERSONAL & ADV INJURY $ / GENERAL AGGREGATE $ / PRODUCTS - COMP/OP AGG $		
AUTOMOBILE LIABILITY [ ] ANY AUTO [ ] ALL OWNED AUTOS [ ] SCHEDULED AUTOS [ ] HIRED AUTOS [ ] NON-OWNED AUTOS		COMBINED SINGLE LIMIT $ / BODILY INJURY (Per person) $ / BODILY INJURY (Per accident) $ / PROPERTY DAMAGE $ / MEDICAL PAYMENTS $ / PERSONAL INJURY PROT $ / UNINSURED MOTORIST $		
AUTO PHYSICAL DAMAGE COLLISION: DEDUCTIBLE / OTHER THAN COL:	[ ] ALL VEHICLES [ ] SCHEDULED VEHICLES	[ ] ACTUAL CASH VALUE / [ ] STATED AMOUNT / [ ] OTHER $		
GARAGE LIABILITY [ ] ANY AUTO		AUTO ONLY - EA ACCIDENT $ / OTHER THAN AUTO ONLY: EACH ACCIDENT $ / AGGREGATE $		
EXCESS LIABILITY [ ] UMBRELLA FORM [ ] OTHER THAN UMBRELLA FORM	RETRO DATE FOR CLAIMS MADE:	EACH OCCURRENCE $ / AGGREGATE $ / SELF-INSURED RETENTION $		
WORKER'S COMPENSATION AND EMPLOYER'S LIABILITY		[ ] WC STATUTORY LIMITS / E.L. EACH ACCIDENT $ / E.L. DISEASE - EA EMPLOYEE $ / E.L. DISEASE - POLICY LIMIT $		
OTHER COVERAGES	This binder is subject to policy terms, conditions, & exclusions	FEES $ / TAXES $ / ESTIMATED TOTAL PREMIUM $		

NAME & ADDRESS

[ ] MORTGAGEE [ ] LOSS PAYEE [ ] ADDITIONAL INSURED
LOAN #
AUTHORIZED REPRESENTATIVE

ACORD 75 (2004/09) NOTE: IMPORTANT STATE INFORMATION ON REVERSE SIDE © ACORD CORPORATION 1993-2004

Per Carrie
ok 8-29-05